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## TECHNIQUE OF LEGAL RESEARCH FOR THE PRACTICING LAWYER \*

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Research is a word to conjure with. By its use vast sums of money have been extracted from the treasuries of foundations, corporations and universities, and by devotion to it in action, the ancient world has been transformed into the marvelous world of today. There are two kinds of research, pure research which seeks to extend the bounds of knowledge by discoveries; and a more humble kind which takes facts already known, assembles them, and classifies them in new ways, thereby bringing to light new relationships. In this kind of research, one searches again for the innermost meaning of that which is dealt with. It is in this sense that lawyers do research. Not only practicing lawyers, but legislators, judges, and legal writers also engage in this secondary kind of research. They do more than this when they seek not merely legislation and judicial decisions, but all elements which in the end will affect the result. These elements are very numerous and they are constantly changing. It is for this reason that the simple question *What is the law on this or that point?* is so difficult to answer. For the lawyer knows that quoting the words of a statute or case does not tell what the result of new litigation will be. In other words, behavior changes concerning the pronouncements of legislatures and courts, both on the part of judges and of enforcement officers.

It has been said that law is not like a straightedge, but rather like a rubber band that stretches and bends. Mathematicians have taught us how to express this idea more scientifically. Supplying meanings for their *x*'s denoting mathematical functions, and for their *v*'s designating variables of which *x* is a function, we find ourselves saying that law in a given jurisdiction applicable to a given set of facts varies as a large number of unstable elements vary.<sup>1</sup>

This jargon begins to have serious meaning when you are called upon to advise a client or to lay out the plan for litigating a case. Variability in law, we have good reason to know, depends among other things on the personnel of the courts, on their security and tenure, upon the changing balance of authority as between the courts, the legislature and the executive. Will the Constitution always mean what the Supreme Court says it means? Or will it mean what the legislature, or the

\* Address before the Forum of the New York County Lawyers' Association, April 22, 1937.

<sup>1</sup>See HICKS, *MATERIALS AND METHODS OF LEGAL RESEARCH*, (2d ed. 1933), Chapter 2.

executive, says it means? Will it mean the same thing in the next administration that it does now? I express no opinion on the question whether this is a situation which ought to exist, but say only that it does exist—that the meaning of so sacrosanct a thing as the United States Constitution varies from time to time to the extent that a multitude of elements affecting it vary.

This being the situation, the task of the lawyer is (1) to predict what the results in an instant case will be for his client, and (2) for the benefit of this client, by advocacy, to do his utmost, within the rules of the game, to make his prediction or prophecy come true. Dealing with existing statutes and cases already decided, the lawyer must strive to retrace the mental processes of the legislators who made those statutes and the judges who decided those cases to see what was really meant; and he must predict what the reaction of the court to the cited statutes and cases will be in the instant case. To influence them he must be an advocate.

We know without doubt that statutes and precedents are only two of the influences which determine the rights of a client. I call them *literary manifestations of the law*, the most objective and concrete things that we can find concerning the law, and yet even those must be thought of as variables. Why are they variables? Because at one and the same time they mean one thing to you, another to your opponent, and another to the court sitting in the case. Because also, statutes may not only be repealed and amended by positive enactment, but their effect may be nullified in whole or in part by subsequent statutes that in no way precisely refer to them. Because their meaning may be varied by judicial interpretation, and they may be totally voided by decisions of the courts. For example; a statute of Wisconsin (Chapter 546, Laws of 1935) is printed in the Wisconsin revision of 1935. It has all the earmarks of an authentic literary manifestation of the law. But a yellow slip inserted in the front of the volume tells us that the act never became law because of a pocket veto (*State ex rel. Finnegan v. Danmann*, 220 Wis. 143) which result came about because the Governor thought he could veto part of the act and approve the rest. The partial veto was invalid, and so the whole act was held to have failed to receive his approval.

Precedents are variables because cases in the same courts are in conflict, because subsequent cases affect their weight, and because you do not know how a court in your case will interpret them as precedents. The ability of lawyers as advocates differs, thus affecting the results obtained from judges whose decision in a case at bar you are trying to influence through legal argument.

There are at least four stages of legal research as applied to practicing lawyers.

In the *first*, the search is to determine the factual basis of the problem. This is the beginning of every scheme of research, essential always, no matter how you may thereafter proceed. It is the judge's approach to a case on appeal, and the thread which holds the legal theory of a case together from the first hypothesis concerning it until it is finally heard, it may be, in the highest court of the land. We find this

need for facts especially emphasized in hearings before administrative tribunals such as the Illinois Commerce Commission, some of whose decisions have been nullified on appeal because it failed to make sufficiently definite its findings of fact.<sup>2</sup>

This search for the facts of a case is not confined wholly to events and objective things, but inevitably, as soon as you have a first statement of facts, involves a hypothesis as to the legal bearing of the facts. You begin immediately to translate layman's facts into lawyer's facts; that is, you begin to construct a theory. The instant you do this you are taking the first step in the preparation of your brief. This is the scientific method of the natural scientists, as it is also of everyone in his daily thinking. We cannot do so simple a thing as record facts without involuntarily attempting to classify them, and when we do this we are assuming a hypothesis—setting up a theory. This hypothesis, as the scientists do, may be discarded and replaced many times before you fix on the theory by which your brief will be written. The point to notice here is that legal research and briefmaking are parts of the same process, and that they cannot really be wholly separated. You begin to think legally even before you start “looking up the law.”

The *second stage* of legal research requires the finding of literary manifestations of the law in the jurisdiction involved, having some relation to the facts of the case, and which fit into the hypothesis upon which you are for the moment working. This means that you try to find pertinent statutes, cases and administrative rulings and regulations.

The *third stage* follows, in which you intensively examine the assembled legal material, classify it with critical care, and make sure that it corresponds to the theory of the case that you are tending to adopt for brief writing.

The *fourth stage* is the one in which you deal not only with technical legal material, but combine it also with all other elements (described above as variables) which affect your theory of the case, throw all your facts, legal and otherwise, into legal perspective, determine what your prediction of the possible result of argument will be, and choose the strategy and tactics of your scheme of advocacy.

It is the *second* of these four stages of legal research about which I have been asked to speak—that which deals with the finding of pertinent statutes, cases, and administrative rulings and regulations. It is the most commonplace, mechanical and, to most people, uninteresting of the four stages. Perhaps I can tell you nothing new about it. If perchance I do, it will be in relation to the system of work, and the relation of the parts of the task to each other.

The first requirement is to know, as a part of a lawyer's equipment, what important books exist and are currently published. This means that every lawyer should be to some extent a legal bibliographer. Right here, I wish to make a plea to lawyers to adopt the habit of using the law library's card catalogue. These catalogues are expensive to make, and while essential to the librarian in building up the

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<sup>2</sup> 31 ILL. L. REV. 757.

library, serve only half their purpose if lawyers do not personally use them. Lawyers as a class seem to be particularly averse to using them, and to know little about how to do so. Often they thereby fail to discover books of prime importance to their search. They may possess skill in looking up a subject in a digest, but stumble helplessly when searching for the same subject in a card catalogue.

Let us run over hurriedly some of the books both for New York and for Federal law in which one must look to find pertinent statutes.

For New York, there are *McKinney's Consolidated Laws, Annotated*, with pocket supplements; the current session laws, published first in the advance sheets of the official series of reports; compilations of laws on special subjects; regulations of administrative boards and commissions, such as the *General Orders of the Public Service Commission*; the charter and ordinances of the city involved, such as Ash's or Baldwin's editions of the New York City Charter; the codes of procedure such as the Gilbert-Bliss, Clevenger, Cahill, Parsons and Medina editions of the Civil Practice Act; and the Gilbert edition of the Code of Criminal Procedure and the Penal Law; and finally the court rules. I include court rules among statutes because for practical purposes they have the same effect as practice acts.

For the Federal government, there are the *United States Code Annotated*, and Mason's *Federal Code Annotated*, both with pocket supplements; the *Statutes at Large*, the *Pamphlet Laws*, which, however, will no longer be published; the Congressional slip laws; and the Court rules which, for the District Courts, are now under revision by the Supreme Court working through a committee, the preliminary report of which was published in May, 1936.<sup>3</sup> *Congressional Hearings*, although not statute law, throw great light on the meaning and purpose of Federal acts; and finally there is the subordinate legislation issued by boards and commissions, and contained in numerous departmental publications. Since March 14, 1936, these have been contained also in the *Federal Register*, published five times a week by the National Archives of the United States, and made up of executive and administrative regulations, of general applicability. Such regulations issued prior to March 14, 1936, are to be compiled and published in a series of volumes supplementary to the *Federal Register*.<sup>4</sup>

In regard to the collected laws represented for New York by *McKinney's Laws* (here presumed to be a correct transcript of the official edition as amended, of the *Consolidated Laws*), and as to the *United States Code Annotated* (here presumed to be identical textually with the official edition and supplements, of the *Code*), it should be noted that in both cases, they are only *prima facie* evidence of what the statute law is, since by statute it is provided that in the event that there is a divergence between the session laws and them, the session laws are controlling.

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<sup>3</sup> *Final Report of the Advisory Committee on Rules for Civil Procedure*, published November, 1937. *Rules of Civil Procedure for the District Courts of the United States*, adopted by the Supreme Court of the United States by an order entered as of December 20, 1937. Presented by the Attorney General to Congress January 3, 1938.

<sup>4</sup> For an illuminating article on what must and what may be published in the *Register*, and on the effect of publication, see John J. Brauner's comments in the *FEDERAL BAR ASSOCIATION JOURNAL*, April, 1937, (Fed. B. A. J. 3:37).

It should be observed also that in the division of New York session laws into Public, Private and Local laws, and of the *Statutes at Large* into Public and Private laws, there are no fixed criteria for determining in which section a particular law will be found. It may be treated as a private law when you think it is public, and *vice versa*. The Federal acts are divided into the two groups by the State Department, which has only general rules to guide it in the division. Two examples will illustrate the situation. An act of March 4, 1927, granting a patent to Del Norte, California, for land to be used as a public wharf is classed as a private act; and an act of February 12, 1927, granting land to San Juan County, Washington, for park purposes, is classed as a public act. It would be helpful if all states followed the example of Oregon, where it is provided that every act shall be a public act, "unless otherwise declared in the statute itself."

The finding of material on a given subject in revised or collected laws is not always easy. Not all statutes or parts of statutes on one topic are contained in the same group. There is a classification or grouping by chapters containing like material, but the different chapters over-lap. To bring all related material under the respective topics would require printing the same material more than once in the same book. We all know how often we have to piece our statute law together from parts of different chapters in the same book or from acts found in different books. Therefore, it is essential to use indexes.

What indexes exist? For *McKinney's Laws* and for the *U. S. Code Annotated*, there are fine subject indexes, as there are also for the individual volumes of session laws and the *Statutes at Large*, and for the codes of practice. But these indexes themselves are not completely exclusive and inclusive as to the items placed under the various headings. Not infrequently, you fail to find listed in the obvious place in an index a reference to a statute which you know exists. By some quirk of the index maker's mind, it is under another heading which has not yet occurred to you. Therefore, it is a safe practice not only to look under the obvious headings, but also to explore all alternative headings that you can think of.

There are also independently published statute law indexes with which the lawyer should be familiar. For New York there are Baxter's *General Index to the Laws, 1777-1907*, and Bender's *Consolidated Statutory Index*, with pocket supplements, covering the *Consolidated Laws*, general independent statutes, the codes and court rules; and there is a combined index of the session laws of all states, the *State Law Index*, now in five volumes, covering the years 1925 to 1935. A volume prepared by the Legislative Reference Service of the Library of Congress, is published every two years. It is confined to general and permanent laws, and therefore excludes those designated as local, private, temporary and special acts, some of which you may be thinking of as public and permanent acts. For the Federal acts there are Beaman and McNamara's *Index Analysis of the Federal Statutes*, for the years 1789 to 1873; and McClenon and Gilbert's *Index to the Federal Statutes*, for the years 1874 to 1931. These general indexes, both for New York and for Congressional Acts, often prove to be a present help in time of trouble.

Having found statutes that are pertinent to your case, how shall these statutes be tested as to their value for use? Everyone knows that the annotations to McKinney, Mason, and the U. S. Code, are invaluable for this purpose. You get from these annotations information on the legislative history of the acts and also on their judicial history. It must be remembered, however, that these annotations have no official status, and that they were written by lawyers, who like yourself, are prone to error. It is the part of wisdom, surely, to verify the conclusions of the annotators. One help in doing this is Shepard's Citation books, which have extensive sections devoted to statutes, for some states much more extensive than for others. The statutory sections in Shepard's New York Citation books are not as comprehensive as is their service for Federal acts. In such books we find not only citations to cases interpreting and voiding acts, but also references to amendments and repeals. A final means of testing acts is fortunately one that is seldom necessary. I refer to the comparison of the words of acts as found even in official editions of the session laws, with the enrolled acts filed in the archives of the legislature. The exact wording, including the punctuation, is necessary to the strict construction of an act, and there are instances in which the meticulous care of the lawyer has been rewarded by important discoveries.

Most lawyers begin the search for pertinent cases before they search for statutes. I have reversed the order so that the importance of statutory research may not be overlooked. If you have found pertinent statutes in the annotated laws to which reference has already been made, and if you have Shepardized them, you have probably also found references to pertinent cases. In what books will these and other similar cases be found? I apologize to this audience for naming them, because you know them better than I do. But I do so for a particular reason which will presently appear. Three of the official series of reports for New York are paralleled by other reports, the *New York Reports* by the *Northeastern Reporter* and the *New York Supplement*, and the other two, viz. the *Appellate Division Reports* and the *Miscellaneous Reports*, also by the *New York Supplement*. Most of the material in the other official series, viz. the *State Department Reports*, can be found also in the publications of the individual departments and bureaus concerned. This set contains the informal opinions of the Attorney General, but his formal opinions are found only in his Reports.

For the Federal courts, the *United States Supreme Court Reports* are paralleled by the *Supreme Court Reporter* and by the *Lawyer's Edition*, while a complete report of cases in the Circuit Courts of Appeals and in the District Courts is found only in the *Federal Reporter*, 2d, and in the *Federal Supplement*, respectively. I speak here, of course, only of the chief current sets. The *Federal Supplement* contains also cases decided in the District Court for the District of Columbia, in the Court of Claims and in the Court of Customs and Patent Appeals, thus paralleling three current sets of reports. Then there are the numerous sets of reports containing decisions of the administrative departments and tribunals, such as the Federal Trade Commission, the Interstate Commerce Commission and the Treasury Department.

Leading cases selected from the decisions of both Federal and State Courts can be found in *American Law Reports, Annotated*, and its predecessors. If one of the pertinent cases in which you are interested is published in this series accompanied by an annotation, your path will be very much smoothed. Two volumes, just published, entitled the *New York Annotator*, list all New York cases referred to in the annotations of the *American Law Reports, Annotated*. You may be greatly helped also if your topics falls within the scope of the special subject reports that are currently published, such as the *American Bankruptcy Reports*, *American Maritime Cases*, and *Negligence and Compensation Cases, Annotated*.

Getting references to pertinent cases by means of someone else's annotations to a statute or case is a roundabout way of selecting cases from the reports. How can it be done by a more direct method? Obviously one must have a subject index. Such subject indexes we call digests. "A legal digest is a compilation of paragraphs containing concise summaries of points in cases, grouped under appropriate headings, the chief of which are alphabetically arranged."<sup>5</sup>

Typical digests are the Abbott *New York Digest, Consolidated Edition*, and the digests for the *U. S. Supreme Court Reports*, and for the *Federal Reporter and Supplement*. There is a digest for *American Law Reports, Annotated*, and most comprehensive of all, there is the *American Digest System*. A series of indexes made up of numerical citations of cases grouped under subject headings, published for the U. S. Reports, and for many of the states, but no longer for New York, is known as Shepard's *Topical Indexes*. To use these indexes successfully you must be pretty sure of your knowledge of the classification scheme. In fact, the minute you open any digest, you must begin to think in terms of *classification*, and be conscious of *arrangement* as distinguished from classification.

I have said that the arrangement of the chief groups in the digests is alphabetical. This is not the order of the groups in the scheme of classification which is before the digester when he is selecting the material to go in these groups. That scheme is arranged in a logical order according to a scientific theory. The rearrangement in the order of headings is made for the convenience of the user.

"The digester assembled the material for his groups following a scientific theory of classification?" someone may ask. "If so, it was a faulty scheme." I reply that the scheme for the American Digest System was as good as anyone had worked out at the time it was adopted; and that no one has proposed a better scheme that could be used in its place. Improvements could be made, it is true, but I doubt if it would be worth while to make any extensive changes. Any new scheme would be equally wrong for some purposes. No one can foresee that you will want to find grouped in a digest all points in all cases applicable to a particular set of facts in your case. The permutations and combinations of facts are innumerable, and the number of different relationships between facts and legal ideas is equally stupendous. These relational nuclei are like snowflakes, of which no two have exactly the same crystalline structure. Yet there are groups which have characteristics in common.

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<sup>5</sup> HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH, (2d ed. 1933), p. 212.

Someone has oracularly said that the purpose of classification is to classify. Not so. Classification in digests is not an end in itself. It is merely a means to an end. The digester's scheme of classification serves only to help him to segregate what he thinks is *like material* into a series of general groups, which the publishers arrange in what they think is a convenient way, so that you can find the index paragraphs that you are seeking. If you find what you want, no matter what heading it is under, you appropriate it and reclassify it to serve your particular purpose. All thinking is a process of classification and reclassification. Whenever we weave a series of legal ideas into a new pattern, to apply them to a case, we are classifying them. You want a new classification for each case, but this is the lawyer's task. No fixed classification is satisfactory to anyone except the person who makes it. But we can learn to find ideas in such a classification, even though according to our present thought, the scheme is faulty.

But it may be objected that even when the scheme is good, the sorting of the paragraphs is bad. In orange groves, they have belts to convey the fruit to a succession of tables perforated with holes of different sizes, the smallest holes in the first table. As the oranges progress over them, the smallest drop through first, and the others are carried on until they reach holes through which they can pass. Thus there is a mechanical classification by size. You can't do that with digest paragraphs.

Consider the plight of the digest maker. He is not a mere railway mail clerk shooting letters with unerring aim into rows of bags. He is dealing with ideas, not objects. When he puts a digest paragraph into a compartment, he hopes to be as accurate as is a mail clerk. He does not always succeed, for ideas are difficult to label. They overlap. Several people working on the same digest do not always think alike, and the same person thinks differently at different times. The time will never come, I fear, when every point in every case will be listed on separate cards, which will be punched to show the relationship of the legal points to all kinds of facts and to all other legal points. You would decide what you wanted, set the International Business machine, and run the cards through, thus sorting out just what you need. No, not in our time. There will always be the difficulty of punching the cards, and perhaps of knowing what you want. So I say, be patient with the digest maker. Even be grateful to him.

Nearly everything that I have said about digests applies to encyclopaedias. The latter differ in form from digests, and they have a dual character. They are compendiums, or collections of brief treatises on the law, but they also have their use as subject indexes. Instead of digest paragraphs arranged under headings, you have the same material reworded to form textual statements, each one of which is supported in the footnotes by citations of cases. The footnotes sometimes occupy more space than the text. The problems of classification and arrangement are the same as they are for digests.

The Abbott *New York Digest* used to be called a cyclopaedic digest, but has been changed into a true digest. There is now no legal encyclopaedia devoted exclusively to New York State, but there are such books for some other states, for example, *California Jurisprudence* and *Texas Jurisprudence*. The typical general



encyclopaedias, corresponding to the American Digest System, are *Corpus Juris* and *Corpus Juris, Secundum*. Those corresponding to the digests for the annotated reports series are *Ruling Case Law*, and its successor, *American Jurisprudence*. Some people like to use encyclopaedias and some, digests. The difference between them is chiefly one of form, not of content.

Digests and encyclopaedias are, themselves, elaborate subject indexes. Their arrangement has been simplified as much as possible. Each heading is provided with a syllabus telling what is and what is not included under that heading. And there are numerous cross references. Nevertheless, because of the many subdivisions of the chief topics, it is not always easy to find what you seek. There may be no headings for many topics in which from time to time you are interested. The digesters did not have your particular problem in mind when they sorted the digest paragraphs into groups. Yet the material may be there somewhere. The publishers know about these difficulties, and have therefore provided subordinate indexes—indexes to the master indexes. Lawyers of the old school used to scoff at such books, calling them “Yellow Dog books,” suggesting that only the ignorant need them. But no one need scoff today. Every lawyer needs all the help he can get. Examples of the books to which I refer are the *Descriptive Word Index* to the Abbott Digest; the *Descriptive Word Index* to the American Digest System, and to *Corpus Juris* and *Corpus Juris, Secundum*,<sup>6</sup> and the *Quick Search Manual* for *Corpus Juris-Cyc*. It should be noted that each volume of both *Corpus Juris, Secundum*, and of *American Jurisprudence*, has its own index. All of these aids index names of things, questions of fact and questions of law in one alphabet.

I need not refer, except in passing, to methods of testing the probable weight of pertinent cases which your search has uncovered. Every lawyer knows about *Shepard's Citations*, in which the numerical citation form is employed; and about Haviland and Greene's *Analyzed New York decisions and citations*, in which the arrangement is by titles of cases. In such books we find set out, as in a graph, the rising and falling values of cases as precedents. These books are pretty reliable guides as to leading cases. They disclose also that some cases, perhaps the one you chiefly value, have had no notable judicial history after the date when they were decided. For administrative decisions, there is often no help except from your own investigations. Suppose, for example, that you find a decision, important to you, reported in the *United States Internal Revenue Bulletin*. The Bureau, in this *Bulletin*, warns us that such rulings may be cited as precedents only at our own risk. They lack the status of Treasury decisions. They are published only “for the information of taxpayers and their counsel as showing the trend of official opinion in the administration of the Bureau of Internal Revenue; the rulings other than Treasury decisions have none of the force or effect of Treasury decisions and do not commit the Department to any interpretation of the law which has not been formally approved and promulgated by the Secretary of the Treasury. Each ruling embodies the administrative application of the law and Treasury decisions to the entire state of facts upon which a particular case rests. It is especially to be noted that the

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<sup>6</sup> The latter index has not yet been published.

same result will not necessarily be reached in another case unless all the material facts are identical with those of the reported case. As it is not always feasible to publish a complete statement of the facts underlying each ruling, there can be no assurance that any new case is identical with the reported case. As bearing out this distinction, it may be observed that the rulings published from time to time may appear to reverse rulings previously published." Thus the Bureau gives itself complete freedom of action.

If you have found a leading case upon which you wish to rely, or especially if it is one which you will have to combat, it is useful to examine the appeal papers by means of which it was brought up to the court of last resort. You may find that it was strongly argued on a different theory than that on which it was decided. And you may uncover unsuspected facts. Law libraries are fast filling up with collections of such briefs and records. If House Resolution 4848 ever became law<sup>7</sup> they may be called upon to add talking films and projection rooms to their library facilities. The Resolution provides that District judges may prescribe whether the proceedings in a case shall be recorded by talking moving-picture machines, so that Appellate courts may view and hear them as part of the record. A reasonable charge would be made for the use of the recording equipment and the records made therewith, "to be taxed as part of the costs in each case wherein such equipment or recording were used."

We have talked thus far only of approaches to law reports through digests and encyclopaedias, with the aid of their own subsidiary indexes, such as the *Descriptive Word Index*. Access to cases may be had by other means valuable either alone or in combination with other methods. There are also incidental advantages in some of these methods which commend them. These methods begin respectively with the use of treatises, dictionaries and periodical indexes. If your problem deals with agency, or contracts or conflict of laws or property or torts or trusts, you can turn to the American Law Institute's *Restatements* of those subjects, supplementing the doctrine expressed, by the state annotations published in separate volumes. Or you can turn to any well-known treatise on your subject, the existence of which is disclosed to you by the library card catalogue. You find citations of cases by this method and in passing, by reading the text, reorient yourself in the topic. From the footnotes you select a pertinent case, look it up in the table of cases to your digest, where you find the key number for it. Turning to the part of the digest thus indicated, you find digest paragraphs for other similar cases, from which you select those which you wish to read in the reports.

If, instead of using the treatise method, you look first in the *Index to Legal Periodicals*, published by the American Association of Law Libraries, you may find a reference to an article on the precise point which you are studying. This *Index* gives references, arranged by legal subjects, to articles in every important legal periodical published in the English-speaking world. The reading of the articles pointed out to you discloses supporting cases which you then follow up through the tables of cases and the digests. Or you may begin by looking up in a dictionary

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<sup>7</sup> See U. S. LAW WEEK, March 2, 1937.

some word or phrase that seems vital to your problem. It is surprising how often consultation of *Bowvier's Law Dictionary*, or, better still, of *Words and Phrases Judicially Defined*, will reveal a leading case from which a definition was taken. This case, by the method described above, will be the entering wedge to the digest, and through it to the reports.

The kind of research which I have been attempting to describe puts the responsibility on the lawyer who is preparing his case. He uses the law books mentioned only to aid him in his own research. He does not accept as authentic and authoritative anything except what is found in statutes, cases and administrative rulings and regulations. If he adopts the view of a text writer, it is only after verifying his authorities. This is a laborious task, involving the use of many books. To aid the lawyer in this task, and especially to bring his material thoroughly down to date, certain publishers have evolved a new kind of law book, known as the *Loose Leaf-Service*. In these services are brought together and kept up-to-date by frequent additions and substitutions, reprints of all material discovered upon numerous special topics. They include statutory, judicial and administrative material. If you can afford to own these services, or if you have access to them, it is well to use them, although I would not describe this process as simplicity itself. If you do use them, do not rely on them implicitly without verification. They are someone else's work, and are subject to error. Moreover, there may be error in your own office. Have the new sheets been filed in the right place? Or are they even now still in the envelope in which they were mailed to you?

There is a minor technique involved in all that I have been advocating—a minor technique to which some people refer as if it were the whole of legal research. This technique is illustrated by a series of bibliographical problems which I have been accustomed to give to law students.<sup>8</sup> They were formulated after observation of questions asked over a period of years by students and lawyers in the library. How do you do this? How can I find that? This book is in use, what can I use instead? and so on. The following are types of questions that were evolved: How can a case be found when only its numerical citation is known?

How can a case, or a statute, be found when only its title is known?

How can a case, or a statute, be found when you have only its numerical citation, and lack the volume for which the citation calls?

How can the judicial history of a case, or a statute, be traced?

How can the legislative history of a statute be traced?

The answers to such questions I have already put into print.

These problems are the setting-up exercises of the lawyer, to strengthen his mental muscles and give him skill in using books and the finding devices. No one really likes such prescribed exercise. There isn't the thrill in it that comes from finding material that you need in an actual case. Setting-up exercises are not as amusing as is playing basketball. Nevertheless, if you are to be skillful and direct instead of fumbling and roundabout in practical legal research, you must acquire

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<sup>8</sup> See HICKS, MATERIALS AND METHODS OF LEGAL RESEARCH, (2d ed. 1933), Chapter XVI.

this technique. Wandering aimlessly around in the maze of law books is the most disheartening thing that can be done. By experience and exercise, at a time when he is not pressed by the fear of error, the lawyer must *find himself* in the library, and form his own system of work. I say *system*, because nothing else will do. He may have his flashes of intuition sometimes, which will shorten the process, but he is never sure that he has not overlooked an important point if he does not plod along methodically according to a system. This system must be his own. Different people like to work in different ways, and no two approaches are exactly alike. The publishers know this and have provided several different sets of useful tools.

So I say, after experiment, select your own method and systematize it. Write down in order the processes that you prefer, and make a list of the books that you have found useful. At the risk of being tedious, I have named some of them. You know them, but you may overlook them in the hurry of your work. When you attack a problem, check this list as you go along. You keep a diary showing just what you do for a client, in order that you may itemize his bill. Be just as particular in itemizing for yourself what you do, and should do, in looking up the law in his case.

Some men like to handle books, become familiar with their peculiarities, criticise them, and in their own copies, write *emendations* and corrections. To some men, law books are like living things—their friends and companions. Kent, for example, confided to the flyleaves and margins of his books thoughts that he gave to no person, even through his *Commentaries* and decisions.

To some other men, books are mere machines, instrumentalities with which to work out problems, keys with which to open doors to knowledge, wrenches with which to loosen bolts to take off the lids of judges' minds, so that their inner workings may be seen.

To whichever class you belong, you, as lawyers, have a duty to be skillful in the use of law books. It is an old saying that lawyers do not know so much more law than other people, but they know better how to find it. It takes time and patience, industry and experience to become thus skillful. You can acquire some of your skill at the expense of your clients; but they should not have to stand it all.

I have outlined the processes and technique of one phase only of legal research—that which deals with the use of law books—that is, with one type of variable of which law is a function. When following this process, the lawyer is always thinking ahead to his brief, otherwise he will make little progress. Many other things than law-book research will, however, have a part in determining what line of argument his brief will take.